Supreme Court, U.S.
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No. 91-1394

In The

Supreme Court of the United States

October Term, 1991

RONALD J. WYLES and REGINA L. WYLES,

Petitioners,

vs.

DEAN W. SWORD, JR., TRUSTEE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether 26 U.S.C. § 401(a)(13) and 29 U.S.C. § 1056(d)(1) are non-alienation and anti-assignment federal non-bankruptcy law, or whether they simply state minimal requirements a contract must contain to qualify as an employee pension benefit plan under the Employee Retirement Income Security Act of 1974, as amended ("ERISA")?

LIST OF PARTIES

The list of all parties provided by petitioners is complete.

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RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

This list is correctly reported by the petitioners.

STATUTES INVOLVED

These statutes are correctly reported by the petitioners.

STATEMENT OF THE CASE

This statement is correctly made by the petitioners.

SUMMARY OF ARGUMENT

This case is not of sufficient imperative public importance to warrant a writ of certiorari before the Court of Appeals for the Fourth Circuit considers the case and renders judgment.

No right of the Wyles protected by the Constitution is at issue; a case now before this Court addresses all issues the Wyles raise; and, this case is no longer of public importance because Congress introduced legislation in both the Senate and the House of Representatives that answers the question raised.

REASONS FOR DENYING THE WRIT

I.

THIS CASE IS NOT OF IMPERATIVE PUBLIC IMPORTANCE.

Although this Court has granted writs of certiorari before courts of appeals consider cases and render judgments, that relief is limited to circumstances which are not present here. In *Wilson v. Bohlander,* 361 U.S. 281, 80 S. Ct. 305, 4 L. Ed. 2d 282 (1960), a civilian employee of the United States military was court martialed and incarcerated. The civilian filed a writ of habeas corpus, asserting his right, protected by Amendment VI to the Constitution of the United States, was violated by the military court. In *Hannah v. Slawson,* 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307 (1960), at issue were rules which deprived Negro voters of the right to vote, which was protected by the Due Process Clause of Amendment V to the Constitution of the United States.

This Court granted writs of certiorari in each of those cases, and decided the constitutional questions, before the courts of appeals rendered judgments.

McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10, 83 S. Ct. 671, 9 L. Ed. 2d 547 (1963), raised an issue of international law of importance sufficient to warrant granting a writ of certiorari before the Court of Appeals for the District of Columbia Circuit rendered a judgment.

The Wyles raise no issue of constitutional proportion or international law. Filing a petition in bankruptcy invokes no right or privilege protected by the Constitution. *United States v. Kras,* 409 U.S. 434, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1973).

II.

THE WYLES' POSITION IS ADEQUATELY PROTECTED.

This Court granted a writ of certiorari in a case legally and factually identical to this one. *Patterson v. Shumate,* No. 91-913. That similarity is the whole reason the Court of Appeals for the Fourth Circuit held this case in abeyance.

Additionally, the Wyles demonstrate no reason their position as appellees in the court below is inadequately addressed or not protected by the respondent in *Patterson, id.*

III.

THIS CASE IS NO LONGER ONE OF MONUMENTAL PUBLIC IMPORTANCE.

On November 19, 1991, two bills, S. 1985 and H.R. 3804,

were simultaneously introduced in Congress. They answer the very question raised by this case; they will amend the Bankruptcy Code to establish by statute that interests of individuals in ERISA-qualified employee pension benefit plans are not estate assets subject to administration by trustees in bankruptcy. That legislation will codify the result in *Shumate v. Patterson,* 943 F.2d 362 (4th Cir. 1991), and its progeny.

Congress answered the question of monumental public importance through legislation. Therefore, even if this Court reverses the court of appeals in *Shumate v. Patterson, id.*, that outcome and the result in this case will be isolated results taken from the slice of time in which the Wyles and Shumate voluntarily filed their petitions in bankruptcy. Even if Shumate loses in this Court, it will effect no issue of public policy; Congress addressed that issue fully on November 19, 1991.

Finally, if this case is of the monumental public importance the Wyles suggest, they should want that issue decided sooner rather than later. For that reason, this Court should deny certiorari in this case and hear oral argument as scheduled on April 20, 1992 in *Patterson v. Shumate,* No. 91-913.

CONCLUSION

For the reasons stated herein, Respondent Dean W. Sword, Jr., Trustee, prays this Court deny the Wyles' petition for a writ of certiorari.

Respectfully submitted,

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